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LOS ANGELES, PALO ALTO,
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DENVER, NORTHERN VIRGINIA,
ORANGE COUNTY, SACRAMENTO,
WALNUT CREEK, CENTURY CITY
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

February 5, 2007

Writer's Direct Contact
415.268.6538
JTaylor@mofo.com

Via USPS Express Mail

TTAB

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Ophthonix, Inc. v. UV Sales, Inc.
Opposition No.: To Be Assigned
Mark: IZONE FACEWARE
Serial No.: 78/465,868
Our Reference: 57847-6013.501

Dear Commissioner:

Enclosed for filing is a Notice of Opposition (in triplicate) and a receipt verification postcard in the above-referenced matter.

The Commissioner is hereby authorized to charge \$300.00 for the opposition and any additional fees which may be required, or to credit any overpayment, to **Deposit Account No. 03-1952 (our reference no. 578476013501)**. A duplicate copy of this letter is enclosed for this purpose.

Very truly yours,



Jennifer Lee Taylor

Enclosures

02/09/2007 SHILSON1 00000101 031952 78465868
01 FC:6402 300.00 DA



02-05-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #34

sf-2265331

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/465,868
Filed on August 11, 2004
Published in the Official Gazette of August 8, 2006

Ophthonix, Inc.,

Opposer,

v.

UV Sales, Inc.,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Box TTAB FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Ophthonix, Inc. ("Opposer"), a Delaware corporation having its principal place of business at 10455 Pacific Center Court, San Diego, California 92121, believes that it will be damaged by registration of the mark shown in application Serial No. 78/465,868 and hereby opposes the same.

As grounds for the opposition, it is alleged as follows:

1. Opposer develops, markets, and distributes vision correction technology, including eyeglasses, eyeglass lenses, and devices for measuring prescriptions. It has been promoting its

products and services using used the IZON mark since at least as early as August 2004, and shipping eyeglasses and eyeglass lenses using the IZON mark since May 2005.

2. Opposer is the owner of U.S. Registration No. 3,188,278 for IZON for use in connection with “eyewear, namely, eyeglass lenses, spectacles, and contact lenses for refractive correction of both low and high order optical aberrations” in Class 9. This registration issued on December 19, 2006, based upon an application that was filed on July 20, 2004. A true and correct copy of the certificate of registration is attached hereto as Exhibit A.

3. Opposer is also the owner of U.S. Application Serial No. 78/453,706 for IZON for use in connection with “eyewear, namely, safety goggles” in Class 9 and “intraocular apparatus for vision therapy correction/enhancement, namely intraocular lenses” in Class 10. This application was filed on July 20, 2004, was published for opposition, and will register as soon as Opposer files its statement of use. A true and correct copy of a printout from the United States Patent and Trademark Office (PTO) website setting forth the details of Application Serial No. 78/453,706 is attached hereto as Exhibit B.

4. Opposer is also the owner of U.S. Application Serial No. 78/612,317 for IZON in a stylized format for use in connection with “eyewear, namely, eyeglass lenses, spectacles, and contact lenses for refractive correction of both low and high order optical aberrations” in Class 9, and “intraocular apparatus for vision therapy correction/enhancement, namely intraocular lenses” in Class 10. This application was filed on April 19, 2005, and has been suspended pending the disposition of the opposed application. A true and correct copy of a printout from the PTO website setting forth the details of Application Serial No. 78/612,317 is attached hereto as Exhibit C.

5. Opposer is also the owner of U.S. Application Serial No. 78/848,390 for IZON CUSTOMIZED PROGRESSIVES in a stylized format for use in connection with “eyewear, namely, eyeglass lenses, safety goggles, spectacles, sunglasses and contact lenses for refractive correction of both low and high order optical aberrations” in Class 9. This application was filed on March 28, 2006, and the examining attorney has indicated in the first office action that it will

be suspended pending the disposition of the opposed application. A true and correct copy of a printout from the PTO website setting forth the details of Application Serial No. 78/848,390 is attached hereto as Exhibit D.

6. On August 11, 2004, Applicant filed U.S. Application Serial No. 78/465,868 for IZONE FACEWARE based upon alleged use of the mark for “retail stores featuring sunglasses, reading glasses, clip-on sunglasses, and eyewear accessories” in Class 35.

7. In view of the fact that the PTO believes Applicant’s IZONE FACEWARE mark, when used in connection with “retail stores featuring sunglasses, reading glasses, clip-on sunglasses, and eyewear accessories” is likely to be confused with Opposer’s IZON (stylized) and IZON CUSTOMIZED PROGRESSIVES (stylized) marks, Opposer submits that the PTO would conclude that confusion is also likely between that mark and Opposer’s IZON mark for eyewear.

8. If Applicant’s IZONE FACEWARE mark were allowed to proceed to registration, it would become a basis for the PTO to refuse to register IZON marks subsequently filed by Opposer, including Opposer’s IZON (stylized) and IZON CUSTOMIZED PROGRESSIVES (stylized) marks. Opposer thereby will be injured if by Applicant’s IZONE FACEWARE mark is allowed to proceed to registration.

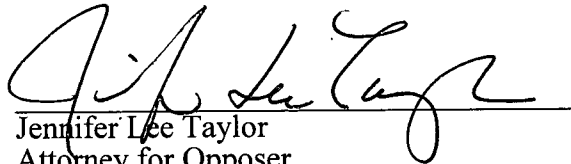
Filing Fee: The PTO is authorized to charge \$300.00 for the Notice of Opposition to Morrison & Foerster’s **Deposit Account 03-1952 (Reference No. 57847-6013501)**.

WHEREFORE, Opposer prays that application Serial No. 78/465,868 be rejected, that no registration be issued thereon, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: February 5, 2007

By:



Jennifer Lee Taylor
Attorney for Opposer
Ophthonix Inc.
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6538
Facsimile: (415) 268-7522

EXHIBIT A

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)



Director of the United States Patent and Trademark Office

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 3,188,278

Registered Dec. 19, 2006

**TRADEMARK
PRINCIPAL REGISTER**

IZON

**OPHTHONIX, INC. (CALIFORNIA CORPORATION)
10455 PACIFIC CENTER COURT
SAN DIEGO, CA 92121**

**FOR: EYEWEAR, NAMELY, EYEGLOSS LENSES,
SPECTACLES, AND CONTACT LENSES FOR RE-
FRACTIVE CORRECTION OF BOTH LOW AND
HIGH ORDER OPTICAL ABERRATIONS, IN CLASS
9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

FIRST USE 5-19-2005; IN COMMERCE 6-2-2005.

**THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.**

SN 78-976,578, FILED 7-20-2004.

JENNIFER WILLISTON, EXAMINING ATTORNEY

EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-05 14:49:25 ET

Serial Number: 78453706 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark



(words only): IZON

Standard Character claim: Yes

Current Status: A request for the third extension of time to file a statement of use has been granted.

Date of Status: 2007-01-12

Filing Date: 2004-07-20

The Notice of Allowance Date is: 2005-08-30

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
WILLISTON JENNIFER LYNN Employee Location

Current Location: 710 -Divisional Unit

Date In Location: 2005-11-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Ophthonix, Inc.

Address:

Ophthonix, Inc.
10455 Pacific Center Court
San Diego, CA 92121
United States

Legal Entity Type: Corporation

State or Country of Incorporation: California

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

EYEWEAR, NAMELY, SAFETY GOGGLES

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)**International Class:** 010**Class Status:** ActiveINTRAOCULAR APPARATUS FOR VISION THERAPY CORRECTION/ENHANCEMENT,
NAMELY INTRAOCULAR LENSES**Basis:** 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2007-01-12 - Extension 3 granted

2007-01-12 - Extension 3 filed

2007-01-12 - TEAS Extension Received

2006-07-17 - Extension 2 granted

2006-07-17 - Extension 2 filed

2006-07-17 - TEAS Extension Received

2006-02-07 - Extension 1 granted

2006-02-07 - Extension 1 filed

2006-02-07 - TEAS Extension Received

2005-11-18 - Divisional processing completed

2005-10-31 - Divisional request received
2005-10-31 - PAPER RECEIVED
2005-08-30 - Notice of allowance - mailed
2005-06-07 - Published for opposition
2005-05-18 - Notice of publication
2005-04-16 - Applicant/Correspondence Changes (Non-Responsive) Entered
2005-03-08 - Unresponsive/Duplicate Paper Received
2005-03-08 - PAPER RECEIVED
2005-02-17 - Law Office Publication Review Completed
2005-02-11 - TEAS Change Of Correspondence Received
2005-01-31 - Assigned To LIE
2005-01-27 - Approved for Pub - Principal Register (Initial exam)
2005-01-10 - Assigned To Examiner
2004-07-29 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Jennifer Lee Taylor

Correspondent

Jennifer Lee Taylor

Morrison & Foerster LLP

425 Market Street

San Francisco, California 94105-2482

Phone Number: (415) 268-6538

EXHIBIT C

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-05 14:49:42 ET

Serial Number: 78612317 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark



(words only): !.ZON

Standard Character claim: No

Current Status: Further action on the application has been suspended.

Date of Status: 2006-11-30

Filing Date: 2005-04-19

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 113

Attorney Assigned:
LOTT JASON E Employee Location

Current Location: M4X -TMO Law Office 113 - Examining Attorney Assigned

Date In Location: 2005-11-22

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Ophthonix, Inc.

Address:

Ophthonix, Inc.
10455 Pacific Center Court
San Diego, CA 92121
United States

Legal Entity Type: Corporation

State or Country of Incorporation: California

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

EYEWEAR, NAMELY, EYEGLOSS LENSES, SAFETY GOGGLES, SPECTACLES, AND CONTACT LENSES FOR REFRACTIVE CORRECTION OF BOTH LOW AND HIGH ORDER OPTICAL ABERRATIONS

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)**International Class:** 010**Class Status:** Active

INTRAOCULAR APPARATUS FOR VISION THERAPY CORRECTION/ENHANCEMENT, NAMELY INTRAOCULAR LENSES

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Design Search Code(s):

24.17.14 - Ampersands (&); At symbol (@); Brackets, punctuation; Commas; Diacritical marks; Exclamation points (!); Punctuation marks; Question marks (?)

26.01.21 - Circles that are totally or partially shaded.

27.03.05 - Objects forming letters or numerals

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-11-30 - Report Completed Suspension Check Case Still Suspended

2006-05-30 - Report Completed Suspension Check Case Still Suspended

2005-11-23 - Letter of suspension mailed

2005-11-22 - Suspension Letter Written

2005-11-16 - Assigned To Examiner

2005-04-27 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Jennifer Lee Taylor

Correspondent

JENNIFER LEE TAYLOR
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105-2482
Phone Number: 415 268 6538
Fax Number: 415 268 7522

EXHIBIT D

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-05 14:49:56 ET

Serial Number: 78848390 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark



(words only): !.ZON CUSTOMIZED PROGRESS!VES

Standard Character claim: No

Current Status: A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2006-09-12

Filing Date: 2006-03-28

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 116

Attorney Assigned:
CARROLL DORITT Employee Location

Current Location: M7X -TMO Law Office 116 - Examining Attorney Assigned

Date In Location: 2006-09-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Ophthonix, Inc.

Address:

Ophthonix, Inc.
10455 Pacific Center Court
San Diego, CA 92121
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

Eyewear, namely, eyeglass lenses, safety goggles, spectacles, sunglasses and contact lenses for refractive correction of both low and high order optical aberrations

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Design Search Code(s):**26.11.02** - Plain single line rectangles; Rectangles (single line)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-09-12 - Non-final action mailed

2006-09-12 - Non-Final Action Written

2006-09-11 - Assigned To Examiner

2006-06-06 - Applicant amendment prior to exam entered

2006-06-06 - TEAS Preliminary Amendment Received

2006-04-20 - Notice Of Design Search Code Mailed

2006-03-31 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Jennifer Lee Taylor

Correspondent

JENNIFER LEE TAYLOR

MORRISON & FOERSTER LLP

425 MARKET STREET

SAN FRANCISCO, CA 94105-2482

Phone Number: 415 268 6538

Fax Number: 415 268 7522

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Ophthonix, Inc.,

Opposer,

v.

UV Sales, Inc.,

Applicant.

Opposition No.:

CERTIFICATE OF MAILING BY EXPRESS MAIL

Box TTAB NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir/Madam:

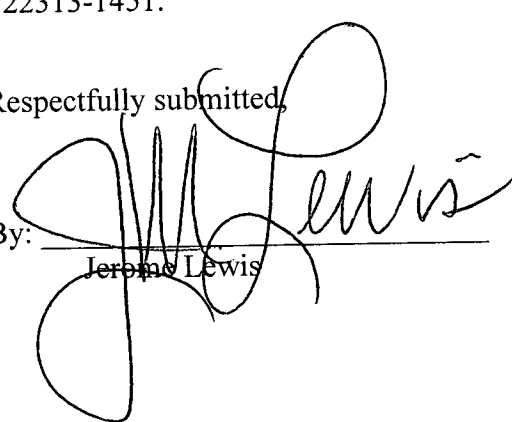
Express Mail Label No.: EV 968744015 US

Date of Deposit: February 5, 2007

I hereby certify that the attached Notice of Opposition (in triplicate + one copy for fees), and receipt verification postcard are being deposited with the United States Postal Service Express Mail delivery as "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above, and is addressed to: Box TTAB Fee, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

Respectfully submitted,

By:


Jerome Lewis